

The State of New Hampshire

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See in  
Opinion

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January 15, 1974

Mr. George T. Gilman, Commissioner  
Dept. Resources and Economic Development  
State House Annex  
Concord, New Hampshire

Dear Commissioner Gilman:

You have requested this office to render an opinion on the title to a certain tract of land, known as the Gile Forest, owned by the Trustees of Dartmouth College (hereinafter referred to as "Dartmouth"), and situated in the Towns of Wilmot and Springfield, New Hampshire. This tract consists of approximately 6500 acres according to acreage figures provided by Dartmouth. It is our understanding that you, with the consent of the Governor and Council, in the name and on behalf of the State, intend to purchase the Gile Forest in accordance with the provisions of Chapter 367 of the Laws of 1973, for public outdoor recreation, forestry and wildlife conservation purposes.

Dartmouth acquired the Gile Forest by the following deeds:

1. Warranty Deed of Walter C. Gardner dated February 16, 1956, and recorded in Sullivan County Registry of Deeds, Book 371, Page 491.

2. Warranty Deed of Walter C. Gardner and Edith B. Gardner dated March 1, 1956, and recorded in Sullivan County Registry of Deeds, Book 371, Page 543.

3. Warranty Deed of Walter C. Gardner and Edith B. Gardner dated March 1, 1956, and recorded in Merrimack County Registry of Deeds, Book 788, Page 184.

4. Warranty Deed of Walter C. Gardner dated December 26, 1961, and recorded in Sullivan County Registry of Deeds, Book 430, Page 491.

5. Quitclaim Deed of Walter C. Gardner and Edith B. Gardner dated July 13, 1962, and recorded in Sullivan County Registry of Deeds, Book 436, Page 368.

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6. Warranty Deed of Walter C. Gardner dated November 27, 1963, and recorded in Sullivan County Registry of Deeds, Book 398, Page 198.

7. Quitclaim Deed of Carl J. Heyser, Jr., dated November 22, 1965, and recorded in Sullivan County Registry of Deeds, Book 466, Page 65.

8. Quitclaim Deed of Walter C. Gardner dated November 28, 1973, and recorded in Sullivan County Registry of Deeds, Book 536, Page 23.

As can be seen from an examination of these deeds, the Gile Forest is comprised of many individual tracts which have been assembled over a period of many years. An independent search by this office of the record title to each of the subject tracts comprising the Gile Forest would consume many months of time. Fortunately, in 1956 when Dartmouth acquired a major portion of the Gile Forest, and again in 1961 when Dartmouth acquired the "Thorpe Pasture", so-called, it retained Attorney Kenneth Andler of Newport to prepare abstracts of title and title opinions for the tracts involved. Attorney Andler, a respected member of the Bar in this State since 1932, has had extensive experience in title matters. In 1963 when Dartmouth acquired the "Dozois Lot", so-called, it retained the late Attorney Kenneth Shaw of Newport to prepare an abstract of title and title opinion. Attorney Shaw, a respected member of the Bar in this State since 1929, also had extensive experience in title matters. This office undertook a title search and prepared abstracts of title for the "Littlefield Lot" and the "Fowler Woodland", so-called, acquired by Dartmouth in 1962 and 1965 respectively. Also, this office updated the abstracts prepared by Attorneys Andler and Shaw and rechecked their abstracts for the "Thorpe Pasture" and "Dozois Lot", so-called.

Mr. Clayton N. Heath, Jr., Chief of the Special Services Division, Department of Resources and Economic Development, was requested by us to recheck the 1956 abstract of title prepared by Attorney Andler as a precautionary measure due to the fact that it is voluminous, extensive and covers many documents relating to many chains of title. Mr. Heath also prepared estimates of acreage for each tract in the Gile Forest. These estimates are based on acreage figures stated in the various deeds, and, where no such figures were available, are based on planimeter measurements taken on a plan entitled "Map of Forest Land in Springfield, N. H., Conveyed by Walter C. Gardner and Edith B. Gardner to The Trustees of Dartmouth College", dated March 1, 1956, by Ira S. Littlefield, Surveyor, New London, N. H. filed in Sullivan County Registry of Deeds, Pocket 5, Folder 3, No. 1. We have relied on Mr. Heath's acreage figures in this opinion.

The opinions herein expressed are based on the abstracts of title to the tracts comprising the Gile Forest. These abstracts are attached hereto and made a part hereof as Appendix B. Unless otherwise noted, the opinions expressed herein relate to the periods of time covered by these abstracts. It is common practice for banks

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in this State to require an attorney undertaking a title examination to search the records back for thirty years and to a warranty deed. The abstracts on which we are relying go back at least forty years, and where possible, to a warranty deed.

For the purpose of rendering our title opinion for each of the subject tracts, we have used the following classifications:

1. Those tracts which, in our opinion, have good and marketable record titles, traceable back at least forty years and to a warranty deed, with no defects or defects merely of an insignificant nature, we have classified as "marketable".

2. Those tracts, the record titles to which in our opinion have defects of a nature which raise the possibility of challenge, but where the risk of substantial challenge appears to be remote because of the passage of at least twenty years since the occurrence of the last defect, we have classified as "sufficient for the purposes for which the property is intended". It is our opinion that upon passage of twenty years, the doctrine of adverse possession would be a viable, although by no means an insurmountable, defense to most challenges.

Dartmouth has had record title to a large part of the Gile Forest since 1956, or for approximately seventeen years. This term of possession, in most instances forms the major portion of the requisite twenty year possession. It is also our opinion that tracts falling into this classification should not be used for substantial improvements, such as buildings, without first giving consideration to the advisability of quieting title.

3. Those tracts the titles to which in our opinion have defects of such a nature that the risk of substantial challenge is not considered to be remote, we have classified as "questionable".

We have rendered individual opinions as to the record title of each tract comprising the Gile Forest, and these opinions are set forth in Appendix A attached hereto and made a part hereof. These opinions contain references to certain exceptions, reservations, easements, covenants, conditions, agreements and liens, of record, which may affect any given tract. These are specified with reference to each tract.

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The opinions herein expressed do not constitute guarantees of title and as is usual are rendered subject to the following:

1. Encumbrances not of record.
2. Such facts as an accurate survey and physical inspection of any given tract might reveal. It should be noted that many of the deeds examined describe tracts by reference to abutters or by descriptions so vague as to make it impossible or impractical for an abstractor to determine the exact locus of such tracts. This is not unusual, however, in deeds involving woodland properties.

For your convenience, the following summary of the title opinions set forth in Appendix A shows the approximate number of acres in each of the classifications described above.

1. 5284 acres - marketable.
2. 657 acres - sufficient for the purposes for which the property is intended.
3. 739 acres - questionable.

The proposed deeds by which Dartmouth intends to convey the Gile Forest to the State of New Hampshire provide that approximately 5300 acres will be under full warranty covenants and approximately 1380 acres will be under limited warranty covenants. Under the terms of the limited warranty, the sole liability of Dartmouth for breach of covenants of title will be limited to One Hundred Ten Dollars (\$110) per acre, without interest, upon eviction or constructive eviction of the State, or its successors and assigns in title. By acceptance of the deed, the State will agree to the foregoing limitation. We also wish to call to your attention that provision in both deeds which requires that the real estate taxes assessed by the Town of Springfield against the Gile Forest for the tax year beginning on April 1, 1973, shall be prorated between Dartmouth College and the State of New Hampshire as of the date the deeds are delivered.

We have reviewed the proposed deeds, copies of which are attached hereto as Appendix C. It is our opinion that the form and content of these deeds are satisfactory to convey the Gile Forest to the State of New Hampshire. All exceptions and reservations contained in said deeds have been noted in our opinions in Appendix A, Sections A and B. However, we wish to bring to your attention the fact that there are several exceptions and reservations not contained in the deeds which may affect title. These are set forth in Section C of Appendix A.

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At the time the deeds are executed, a Certificate of Vote signed by the Clerk of the Trustees of Dartmouth College should be attached to each deed setting forth the following:

1. The resolution of the Trustees authorizing the sale of the Gile Forest to the State of New Hampshire; and

2. The resolution of the Trustees authorizing the Vice-President to execute and deliver the deeds necessary and sufficient to effectuate such a conveyance.

It is our understanding that the Society for the Protection of New Hampshire Forests once held an Option to Purchase the Gile Forest. It would be advisable for you to obtain an assignment to the State of New Hampshire of any rights which the Society may have under that Option. Any such assignment should be carried out in the manner prescribed by the Option.

In view of the fact that an attorney from this office should be present at the closing, would you kindly inform us of any arrangements that are made for the closing.

Sincerely,

Warren B. Rudman  
Attorney General

Roger G. Burlingame  
Attorney

Attachments